

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Otto Kozak (Claimant) v. Daniel Pyle and Garden City Capital Management, LLC  
(Respondents)

Case Number: 03-05881

Hearing Site: New York, New York

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Nature of the Dispute: Associated Person v. Associated Person and Non-Member

**REPRESENTATION OF PARTIES**

Claimant Otto Kozak hereinafter referred to as "Claimant": Yitka Kozak, Atlantic NY.  
Previously represented by Richard J. Babnick, Jr., Esq., Sichenzia Ross Friedman Ference LLP,  
New York, NY.

Respondent Daniel J. Pyle hereinafter referred to as "Respondent": Michael S. Finkelstein, Esq.,  
Finkelstein & Feil LLP, Garden City, NY.

Respondent Garden City Capital Management, LLC ("GCCM") did not enter an appearance in  
this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: August 8, 2003.  
Amended Statement of Claim filed on or about: December 10, 2003.  
Claimant signed the Uniform Submission Agreement: August 12, 2003.

Statement of Answer filed by Respondent on or about: November 13, 2003.  
Statement of Answer in Response to Amended Statement of Claim filed on or about: March 23,  
2004.  
Respondent signed, but did not date the Uniform Submission Agreement.

GCCM did not file a Statement of Answer or Sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; appropriating Atlantic  
Management, LLC business opportunity; conversion of assets; fraudulent conveyance under  
New York Debtor-Creditor Law §§ 273, 274, 275, and/or 276; breach of contract and the implied  
covenant of good faith and fair dealing; and unjust enrichment.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In his Counterclaim, Respondent asserted the following causes of actions: unjust enrichment; slander and libel; tortious interference with contract; and unfair business practices.

Unless specifically admitted in his Answer, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages, in an amount to be determined at hearing, but believed to be in excess of \$500,000.00; reasonable attorneys' fees; punitive damages in the amount of 1,000,000.00; an order setting aside the transfer of assets from Atlantic to Pyle, any third-party entity owned and/or controlled by Pyle, and or GCCM and awarding such damages to restore the full value of the assets at the time of transfer; interest and the costs and disbursements of this action; and for such other, further, and different relief as the Panel deems just, equitable and proper.

Respondent requested that the Amended Statement of Claim be dismissed in all respects including the claim for punitive damages, which are not permitted by law.

In his Counterclaim Respondent requested compensatory damages in the amount of \$750,000.00; that all disbursements and costs in defending this action be assessed against Claimant and regulatory referral be made.

In response to the Counterclaim, Claimant requested the claim be dismissed in its entirety.

### **OTHER ISSUES CONSIDERED AND DECIDED**

At the hearing, Claimant made a Motion to Dismiss Respondent's Counterclaim for defamation. The Panel dismissed the Counterclaim in its entirety.

Respondent GCCM is not a member of NASD and did not voluntarily submit to NASD Dispute Resolution's jurisdiction. Accordingly, GCCM did not participate as a party to this matter.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is for liable and shall pay to Claimant compensatory damages in the amount of \$125,000.00.
2. Respondent's Counterclaims are dismissed in their entirety.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 500.00
Counterclaim filing fee	= \$ 375.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the event giving rise to the dispute. Accordingly, Gunnallen Financial, Inc. is the Respondent's firm.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 per session	= \$ 2,400.00
Pre-hearing conferences:	
July 8, 2004	1 session
May 26, 2005	1 session
Nine (9) Hearing sessions @ \$1,200.00 per session	= \$10,800.00
Hearing Dates:	
September 12, 2005	1 session
October 31, 2005	2 sessions
November 1, 2005	2 sessions
January 24, 2006	2 sessions
January 25, 2006	2 sessions
Total Forum Fees	= \$13,200.00

1. The Panel has assessed \$6,600.00 of the forum fees to Claimant.
2. The Panel has assessed \$6,600.00 of the forum fees to Respondent.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Respondent requested copies of tapes for September 12, 2005 hearing = \$ 15.00

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$ 6,600.00
Total Fees	= \$ 7,100.00
<u>Less payments</u>	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 5,400.00

2. Gunallen Financial, Inc. is solely liable for:

<u>Member Fees</u>	= \$ 8,550.00
Total Fees	= \$ 8,550.00
<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondent is solely liable for:

Counterclaim Filing Fee	= \$ 375.00
Administrative Costs	= \$ 15.00
<u>Forum Fees</u>	= \$ 6,600.00
Total Fees	= \$ 6,990.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 6,990.00

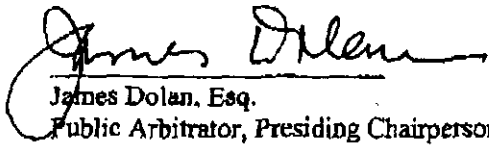
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

James Dolan, Esq.	-	Public Arbitrator, Presiding Chairperson
Joseph J. Arata, Esq.	-	Public Arbitrator
Daniel A. Dolan	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
James Dolan, Esq.  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

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Joseph J. Arata, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Daniel A. Dolan  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

**February 8, 2006**

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

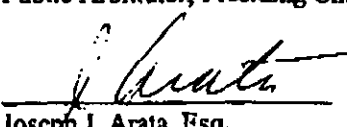
James Dolan, Esq.	•	Public Arbitrator, Presiding Chairperson
Joseph J. Arata, Esq.	•	Public Arbitrator
Daniel A. Dolan	•	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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\_\_\_\_\_  
James Dolan, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Joseph J. Arata, Esq.  
Public Arbitrator

2-2-06  
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Signature Date

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Daniel A. Dolan  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

February 8, 2006

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

James Dolan, Esq.	-	Public Arbitrator, Presiding Chairperson
Joseph J. Arata, Esq.	-	Public Arbitrator
Daniel A. Dolan	-	Non-Public Arbitrator

**Consenting Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

James Dolan, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Joseph J. Arata, Esq.  
Public Arbitrator

Signature Date

  
Daniel A. Dolan  
Non-Public Arbitrator

February 3, 2006  
Signature Date

February 8, 2006

Date of Service (For NASD Dispute Resolution use only)